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NO. 81-

IN THE
# Supreme Court of the United States
October Term, 1981

ARIZONA ELECTRIC POWER COOPERATIVE, INC.,
Petitioner,

v.

MID-LOUISIANA GAS COMPANY, *et al.*,
Respondents.

## MOTION OF PETITIONER FOR CONTEMPORANEOUS CONSIDERATION AND DISPOSITION OF PETITIONS FOR CERTIORARI

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Petitioner, Arizona Electric Power Cooperative, Inc. (AEPCO), hereby respectfully moves that the Court consider at the same Conference, for the purpose of determining whether a writ or writs of certiorari should be granted its simultaneously filed petition in the above entitled case ("Mid-Louisiana") and the petition seeking certiorari in *Pennzoil Company* v. *Public Service Commission of West Virginia*, (No. 81-1672, filed March 10, 1982 ("West Virginia")).

Petitioners are authorized to state that the Public Utilities Commissions of the State of California and the Commonwealth of Pennsylvania and the State of Michigan support this motion. They will shortly be filing

pleadings respectively supporting and seeking certiorari in *Mid-Louisiana*. A petition for certiorari has already been filed in this case by the Public Service Commission of the State of New York (No. 81-1889, filed April 12, 1982).

The *Mid-Louisiana* and *West Virginia* cases are related because they both involve the same question as to the interpretation of the definition of a "first sale"[1] in Section 2(21) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. §§3301, *et seq.*, and because the State Court in West Virginia expressly adopted, as the basis for its decision, the very order of the Federal Energy Regulatory Commission (FERC) which was reversed and vacated by the Court of Appeals for the Fifth Circuit in *Mid-Louisiana*. That Order prescribed a rule applicable to all state and federal regulation of natural gas produced by an interstate or intrastate pipeline or by a state regulated gas distributor. Thus, there is a direct conflict between a Federal Court of Appeals and the highest court of a state on the same important, national question.

Petitioners in both cases rely on the importance of the issue, as well as upon conflict. The federal decision involves the broad impact of the conflicting interpretations of this statute on the administration of both the the Natural Gas Policy Act and the Natural Gas Act, 15 U.S.C. §717 *et seq.*, while the State decision involves such impact upon the administration of all state statutes regulating gas producing intrastate pipelines and distributors. Contemporaneous consideration will enable this Court to determine the true nationwide impact of these conflicting interpretations and whether

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[1]Only such sales make the gas involved eligible for the generally higher ceiling prices set by the NGPA, rather than lower prices set under the Natural Gas Act.

a grant of certiorari is appropriate, on an individual or consolidated basis.

Also, this Court can consider whether it is appropriate to summarily reverse *Mid-Louisiana* and summarily affirm *West Virginia* on the same grounds, as this petitioner maintains. This could well promote judicial economy.

All pleadings have been filed in *West Virginia* and it would normally be very soon placed on the Court's calendar for disposition. Therefore, Petitioners respectfully request that action on *West Virginia* be deferred until *Mid-Louisiana* is ready for simultaneous consideration and disposition. All petitions in the latter case are due to be filed on May 6, 1982. Thus, the delay we seek is slight and no party will be injured by the grant of this motion.

Respectfully submitted,

ARIZONA ELECTRIC POWER COOPERATIVE, INC.

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